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Washington Court of Appeals, Division Three  
By \_\_\_\_\_

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JOHN SHANNON CODIGA,

Appellant.

---

DIRECT APPEAL  
FROM THE SUPERIOR COURT OF GRANT COUNTY

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RESPONDENT'S BRIEF

---

Respectfully submitted:

JOHN KNOELL

Prosecuting Attorney

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by: Teresa J. Chen, WSBA 31762

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### **I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Grant County Prosecutor, is the Respondent herein.

### **II. RELIEF REQUESTED**

Respondent asserts no error occurred in the conviction of the Appellant.

### **III. ISSUES**

1. Where the plea statement informs the defendant of the nature of the charges and the consequences of the plea, the defendant signs the statement affirming that he has read every paragraph of the statement, and the defendant informs the court that he has read the plea statement thoroughly and has no further questions for his counsel or the court, is there any merit to the claim that the plea statement must be read aloud and the defendant quizzed on the definition of legal terms defined in that statement in order to satisfy the requirements of CrR 4.2?

2. Where the defendant affirmed that he had thoroughly read the statement, where the statement informs that the discovery of

additional crimes resulting in an increased standard sentencing range will not be a valid basis to withdraw the plea, and when additional crimes are discovered resulting in an extra point in the offender score, may the defendant seeking to void his contract with the state credibly claim that he was unaware of the consequences of the plea contrary to earlier representations?

#### **IV. STATEMENT OF THE CASE**

On April 12, 2004, the Appellant John Shannon Codiga was charged with five counts of child molestation in the first degree in connection with two victims. CP 1-2.

The two victims reported that their "uncle" Mr. Codiga licked their vaginas on multiple occasions. CP 4, 17-18. Mr. Codiga confessed to police that he had sexual contact with the six year old on three occasions and with the nine year old on two occasions. CP 5, 18.

On November 30, 2004, after the court found the statements of the Defendant and child victims admissible (CP 70-77), Mr. Codiga pled guilty to three counts of first degree child molestation. CP 6-16. The prosecutor explained that the State was willing to dismiss two of the counts in exchange

for the plea in order to spare the children the trauma of testifying, to avoid an appeal, and to hasten closure for the victims. RP November 30, 2004 at 6-7. One of the victim's representatives explained that the "plea bargain was made [] to save the courts money and to ensure that no mistakes may take place that would possibly let him go free." RP February 8, 2005 at 25. In his plea, Mr. Codiga stipulated to the probable cause statement. CP 14.

The Defendant's criminal history known to the prosecutor at the time of plea was a single count of manufacturing marijuana by complicity. CP 9.

MR. KNODELL: ... Mr. Codiga has one prior -- we believe one prior felony out of this court in '97, it's a B felony, so we believe that he has one point. There may be another Class C felony that predates that by one year, but that one we believe would wash out.

MR. EARL: That's correct.

MR. KNODELL: So that is not included on the statement. With that, your Honor, there is an offender score of seven. He's very close to the top end of the range. It's 108 to 144 months.

RP November 30, 2004 at 4-5.

The Defendant's plea statement explains that:

... if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's

recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

CP 9.

The court informed Mr. Codiga that the hearing involved counts one, two, and four -- all counts of first degree child molestation. RP November 30, 2004 at 11. The court ascertained that Mr. Codiga read the plea statement carefully before signing and had a full opportunity to discuss the plea with his attorney. RP November 30, 2004 at 11. The court reviewed the various rights Mr. Codiga was giving up by pleading guilty. RP November 30, 2004 at 12-13. Mr. Codiga stated that he did not need any more time to consult with his counsel or have any questions for the court. RP November 30, 2004 at 13-14. And the court assured itself that the plea was voluntary. RP November 30, 2004 at 10-11, 13-15.

The Defendant signed the plea statement directly under the following language:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and Attachment "A." I understand them all. I have been given a copy of the "Statement of Defendant on Plea of Guilty." I have no further questions to

ask of the judge.

CP 14.

After inquiring of the Defendant, the judge indicated that:

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant had previously read the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

CP 14-15.

The Presentence Investigation revealed that the class C felony conviction (attempting to elude) was followed by a long history of misdemeanor convictions. CP 20-25. Because of the intervening crimes, the eluding crime did not wash out, but resulted in an offender score of 8. CP 25, 44-45.

The prosecutor asked defense counsel if he agreed with the criminal history as set forth in the Presentence Investigation. RP February 8, 2005 at 14-15. Counsel answered that the Defendant did not deny the conviction, but had originally believed it washed out. RP February 8, 2005 at 15. The court explained that due to Mr. Codiga's continuous criminal history, there was no

wash-out. RP February 8, 2005 at 15-17.

## V. ARGUMENT

The Appellant claims that the plea was entered in violation of CrR 4.2(d).

The court shall not accept a plea of guilty, without first determining that it was made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

CrR 4.2(d).

CrR 4.2 is based on Fed. R. Crim. P. 11. In re Keene, 95 Wn.2d 203, 206, 622 P.2d 360 (1980). The rule was promulgated to aid the trial judge in his constitutionally required acceptance of a voluntary guilty plea and to insure a complete record of the factors inherent in a voluntary plea. Wood v. Morris, 87 Wn.2d 501, 508-11, 554 P.2d 1032 (1976). Part of the rule is the plea form itself: CrR 4.2.

The constitutionally required ingredients of a voluntary plea are the defendant's awareness: (1) that he is waiving the right to remain silent; (2) that he is waiving the right to confront his accusers; (3) that he is waiving the right to jury trial; (4) of the essential elements of the offense with which he

is charged; and (5) of the direct consequences of pleading guilty. In re Hilyard, 39 Wn. App. 723, 727, 695 P.2d 596 (1985).

The record demonstrates that the court made a sufficiently thorough examination of Mr. Codiga, that Mr. Codiga orally and in writing declared the conditions of CrR 4.2(d) satisfied, and that Mr. Codiga made a voluntary plea with understanding of the nature of the charges and consequences of the plea.

The Appellant suggests that the court must read aloud the entire plea statement. Such redundancy is not required by any authority. In re Keene, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980).

A. THE COURT ACCEPTED THE PLEA AFTER DETERMINING THAT MR. CODIGA UNDERSTOOD THE NATURE OF THE CHARGES AND AFTER THE COURT WAS SATISFIED THAT THERE WAS A FACTUAL BASIS FOR THE PLEA.

“[A] guilty plea cannot be truly voluntary ‘unless the defendant possesses an understanding of the law in relation to the facts.’” In re Keene, 95 Wn.2d at 209, quoting McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969). CrR 4.2 requires that the court make direct inquiry as to whether the defendant understands the nature of the charge. In re Keene, 95 Wn.2d at 206.

However, direct inquiry can be made “either personally or *by a written statement.*” Id., (emphasis added). The court need not orally question the defendant to determine the defendant’s understanding of the nature of the charge. In re Keene, 95 Wn.2d at 207. A court is justified on relying upon the plea statement which the defendant admits to reading and accepting. In re Keene, 95 Wn.2d at 206.

The standard for proving the defendant’s awareness of the nature of the charges does not require much. When a defendant acknowledges receipt of the information and pleads guilty “as charged in the information,” courts have held that the defendant is aware of the elements of the crime and understands the nature of the charges. State v. Ridgley, 28 Wn. App. 351, 357, 623 P.2d 717, review denied, 95 Wn.2d 1020 (1981). An information which notifies a defendant of the acts and state of mind necessary to constitute the crimes to which he pleads guilty creates a presumption that the plea was knowing, voluntary, and intelligent. In re Ness, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993) review denied, 123 Wn.2d 1009 (1994), citing In re Hews, 108 Wn.2d 579, 596 741 P.2d 983 (1987). Absent evidence to the contrary, courts may assume a defendant’s understanding of the nature of the charge from his representation by presumptively competent counsel. In re

Harris, 111 Wn.2d 691, 696, 698, 763 P.2d 823 (1988), cert. denied, 490 U.S. 1075, 109 S. Ct. 2088, 104 L. Ed. 2d 651 (1989) citing Marshall v. Lonberger, 459 U.S. 422, 437, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983).

The Appellant claims that the court did not determine that Mr. Codiga understood the nature of the charges and the law in relation to the fact of those charges. The claim, as argued in the Appellant's Brief, conflates two different requirements.

The duty imposed by court rule that the judge must be satisfied of the plea's factual basis should not be confused with the constitutional requirement that the accused have an understanding of the nature of the charge. CrR 4.2(d) is intended simply to enable the judge to verify the accused's understanding of the charge and make a record thereof.

In re Hilyard, 39 Wn. App. at 727.

First, the court must determine that *the defendant* understands the nature of the charges. CrR 4.2(d). Second, *the court* (not the defendant) must be satisfied that there is a factual basis for the plea. CrR 4.2(d). By verifying the factual basis in the defendant's statement or attached probable cause statement, the court further confirms the defendant's understanding of the charge. In re Hilyard, 39 Wn. App. at 727. Neither the rule nor any authority quoted by the Appellant states that the criminal defendant must oversee the court's confirmation of the defendant's understanding. This

would be entirely circular.

The nature of the charges, i.e. the law in relation to the particular facts in Mr. Codiga's case, is set forth fully in both the information as well as in the plea statement at pages two and three.

The factual basis for the crime is set forth in the motion and affidavit for arrest and was attached for the court's review.

The Appellant suggests that the court was required to ask Mr. Codiga to give an oral recitation of the facts of his crime and was required to ask whether he understood the legal meaning of "molestation." Appellant's Brief at 6. No authority supports this claim that the judge may use only this particular means of ascertaining comprehension of the nature of the crime.

In the instant case, the court explained that the charges regarded counts one, two, and four -- all counts of first degree child molestation. RP November 30, 2004 at 11. The court further ascertained that Mr. Codiga had read the plea statement carefully before signing. RP November 11, 2004 at 11. The plea statement provides the elements of Mr. Codiga's crimes with relation to the particular facts (i.e. specific dates, location, and victims). CP 7-8. This statement explains that molestation is sexual contact. CP 7. Mr. Codiga signed that he understood all the paragraphs in the plea statement. CP

14. He said he did not need any more time to consult with his counsel or have any questions for the court. RP November 30, 2004 at 13-14. The judge signed immediately below language which states that the "Defendant understands the charges and consequences of the plea." CP 15.

This is adequate evidence that the court determined that Mr. Codiga understood the nature of the charges.

The Appellants suggests that the there must be an *oral* recitation of the facts by the defendant or the prosecutor. Appellant's Brief at 6. There is no authority for the claim. The recitation of the elements is in the Statement of the Defendant on Plea of Guilty, which the Defendant read, understood, and signed. CP 7-8.

The Appellant does not and cannot argue that there is no factual basis for the plea. See CP 3-5. He only suggests that the court is required to discuss orally the facts of the crimes. Appellant's Brief at 6-7, citing In re Taylor, 31 Wn. App. 254, 259, 640 P.2d 737 (1982). This is not what Taylor holds. Nor is it in a defendant's interest to have the details of his molestation of his nieces be discussed in open court in front of other defendants with whom he will be housed in prison. Taylor, like CrR 4.2(d), only requires that the court be satisfied that there is a factual basis. In re Taylor, 31 Wn. App.

at 259 (“Where, however, the court relies only on the written statement of the defendant on the guilty plea form, it must insure that the facts admitted amount to the violation charged”). The court was satisfied. “There is a factual basis for the plea.” CP 15.

**B. THE COURT ACCEPTED THE PLEA AFTER DETERMINING THAT IT WAS MADE WITH AN UNDERSTANDING OF THE CONSEQUENCES OF THE PLEA.**

The Appellant suggests that the Court is required to read aloud the standard range, maximum sentence, offender score, the non-binding nature of the offender score, criminal history, and period of community placement. Appellant’s Brief at 7-8. But all this information is plainly written in the plea statement.

The court can determine the defendant’s comprehension in a much simpler fashion. Namely, in requiring the defendant to sit down and read the plea statement thoroughly, discuss the statement with his counsel, and insure that all the defendant’s questions are answered. This the court did.

Mr. Codiga said that he had read the statement carefully before signing it and had no further questions for his counsel or the court. The statement sets out all direct consequences to the plea.

The Appellant presumes that a criminal defendant’s signature is less

trustworthy than his oral affirmation. This is ridiculous. Reading uses both the sense of sight and sound, because we hear the words in our heads as we read. Therefore, information received through reading is more closely attended to than information which is merely aurally received. A defendant is more likely to grasp complex information when he can sit in quiet and privacy, taking all the time he needs to read and discuss the statement with his counsel, than when he is in the stressful situation of being in a courtroom and in front of a gallery of people confessing to being a child molester.

No authority prohibits a court from relying on a written contract such as this plea statement. In fact, the Washington Supreme Court has held exactly the opposite. In re Keene, 95 Wn.2d at 206-07.

C. THE PLEA WAS MADE VOLUNTARILY WITH THE UNDERSTANDING THAT THE DISCOVERY OF ADDITIONAL CRIMINAL HISTORY COULD CHANGE THE OFFENDER SCORE AND BE BINDING ON THE DEFENDANT.

The Appellant claims that his plea was involuntary, because he believed that his class C felony would wash out. Appellant's Brief at 8. But the Statement of the Defendant on Plea of Guilty, which Mr. Codiga read, understood, and signed, states that he understood that additional criminal history discovered after the plea can affect the sentence and will not be a

valid basis to withdraw the plea. CP 9.

A Class C felony "washes out" or is not included in the offender score if the felon commits no crimes in the five years immediately following release from confinement on that felony.

... Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender has spent five consecutive years in the community without committing any crime that subsequently results in a conviction. ...

RCW 9.94A.525(2). See also State v. Smith, 65 Wn. App. 887, 892, 830 P.2d 379 (1992)(This statute requires that for a prior conviction to wash out, an offender must spend five consecutive felony-free years in the community; the "wash-out" period is interrupted by confinement pursuant to any felony, including confinement pursuant to parole revocation).

At the time of the plea hearing, the parties had investigated Mr. Codiga's Washington felony history. Seeing no felony conviction in the five years after the felony eluding conviction, the parties assumed this crime would wash out.

But additional criminal history was discovered. The state discovered multiple misdemeanor convictions. In December 2002, Mr. Codiga was

sentenced on DUI to 365 days of confinement with 360 days suspended, on DWLS-1 to 365 days with 355 suspended, and on DWLS-3 to 90 days with 89 suspended. CP 21. While the misdemeanors would not individually count in the offender score, they had the effect of preventing the "wash out."

Mr. Codiga knew and agreed that additional criminal history could affect his offender score and be binding on him. This is what happened. Accordingly, the plea was voluntary.

The Appellant claims that his case is similar to that in State v. Walsh, 143 Wn.2d 1, 17 P.3d 591 (2001). He is wrong. The cases are eminently distinguishable.

In Walsh, the parties mistakenly agreed that the prior conviction for vehicular assault was worth one point. It was worth two. No additional criminal history was discovered. Walsh pled guilty to second degree rape, a violent offense, RCW 9.94A.030(45). When the present offense is a violent offense, prior felony convictions receive two points. RCW 9.94A.525(8). The mistake was a legal error, not the result of the discovery of additional criminal history.

In the instant matter, additional criminal history was discovered. This possibility is specifically discussed in the plea statement and Mr. Codiga

specifically agreed that the discovery of additional crimes could not be a reason for him to withdraw his plea.

This appeal asks that the Appellant be permitted to break his contract with the State. This must not be allowed. The Appellant affirmatively, knowingly, and voluntarily accepted this provision and it is binding on him.

#### **VI. CONCLUSION**

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: Dec. 7, 2005.

Respectfully submitted:

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No. 24027-4-III

DECLARATION OF MAILING

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorney of record for the defendant containing a copy of the Respondent's Brief in the above entitled matter.

Dated: December 8, 2005.

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DECLARATION OF MAILING